

SOCO ADVISORY

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Special Edition: Application of the Widely Attended Gathering (WAG) Gift Exception to Invitations to Play Golf or Attend Sporting, Recreational or Entertainment Events

I. Introduction

One of the principal exceptions to the general ban on accepting gifts from prohibited sources or gifts given because of a Federal employee's official position is the "widely attended gathering" (WAG) exception established in the Federal standards of conduct, 5 U.S.C. 2635.204 (g). In December of 2007, the Office of Government Ethics issued a memorandum providing guidance on what kinds of events are covered by the WAG exception (DO-07-047). In light of the OGE guidance, several DoD ethics advisors have asked under what circumstances, if any, sporting or entertainment events could be deemed as "integral" to an overall event, such that a WAG determination could include the sporting or entertainment event.

OGE explained that the availability of a reception before or after a sporting, theatrical or musical event is not sufficient to convert the sporting event or entertainment into a WAG. It did not rule out, however, the possibility of a sporting or theatrical event being integral to an overall event that is a WAG. This advisory discusses the application of the WAG gift exception to golf, sporting, and entertainment events, outlines several examples of sporting and entertainment events that could be viewed as integral to a WAG, and offers examples of sporting and entertainment events that are not integral to a WAG.

A. WAG Determinations of Stand Alone Sporting and Entertainment Events

Because of their nature, events such as musical concerts, professional sporting games, and golf matches do not provide sufficient opportunity for the exchange of ideas among a large and diverse group of attendees to qualify, on their own, as a WAG. For example, at theatrical or sporting events when DoD personnel are offered tickets that assign them to a

particular seat, their discussions with other participants are limited to those people seated in the immediate area (e.g., same row or those seated immediately above and below) and, for theatrical events, only before or after the performance and during intermission. Similarly, when DoD personnel are offered the opportunity to participate in a golf tournament, discussions that occur during the round of golf are generally limited to those individuals in a foursome. Such seating and playing arrangements hardly offer the opportunity to mingle and discuss topics with a large and diverse group of individuals as required by the WAG criteria.

Thus, DoD personnel wishing to participate in a golf tournament or other sporting activity in which an individual seat is assigned must pay fair market value for that activity at their own expense, unless another gift exception applies (such as the ticket is given to the employee by a personal friend). Furthermore, if DoD is paying for official attendance at a conference, DoD personnel must ensure that DoD does not pay for the golf or other sporting activity that may be associated with the conference. When the sporting activity occurs before or after the conference, DoD personnel may not claim additional transportation, lodging, or per diem expenses to accommodate participation in the activity.

Similarly, when DoD personnel are offered tickets to musical or theatrical productions in which an individual seat is assigned, the general rule is that such tickets may not be accepted under the WAG gift exception. There may be a narrow exception to this rule, which is highlighted in the third example below.

B. Sporting & Entertainment Events That May Be Integral to a WAG

Free attendance at a WAG may include admission to a sporting or other entertainment event only if an ethics counselor determines that such an event is integral to the WAG. Integral means that the sporting or entertainment event is a natural and real part of the WAG, not ancillary or incidental to the overall event. Once the ethics counselor determines that a sporting or entertainment event is integral to a WAG and the event otherwise meets the additional WAG requirements of 5 U.S.C. Section 2635.204 (g)(2), individual DoD agency designees must determine if an employee's attendance at the event is in the interest of the agency because it will further agency programs and operations. Although this standard leaves considerable discretion to the agency designee, in some cases, because of the type of event involved, it may be particularly difficult to make a determination of agency interest.

Examples of sporting and entertainment events that could be viewed as integral to a WAG are:

- An invitation to the Governor's infield tent at the Preakness (horse races) where invited federal personnel meet in the confines of the tent and are afforded the opportunity to gather and talk before, during, and after the races with a large and diverse group of participants sharing a wide range of views. In this example, a legitimate case can be made that the races are integral entertainment to the WAG.

- An invitation to view a sporting event from a large box in an indoor arena or stadium. There, if the box is big enough to accommodate a large group of people, the diversity of views of those people at the time of attendance is sufficient to meet the criteria, and there is an opportunity to exchange views during the sporting event, the sporting event may be determined to be integral to the WAG.
- A ticket to a movie screening where attendees are invited to participate in a group discussion of issues raised by the presentation as a significant part of the overall event.

C. Sporting & Entertainment Events That Are Not Integral to a WAG

When a DoD ethics counselor determines that the sporting or other entertainment event is not integral, i.e., that it is collateral or incidental to the WAG, DoD personnel may accept free admission to the sporting or entertainment event only if another gift exception applies. This office is unable to envision an instance when a round of golf or ticket to a sporting event in which a specific seat is assigned could be deemed an integral part of a WAG.

Often a golf tournament or similar recreational activity is immediately preceded or followed by a dinner, reception, or luncheon. If these dinners, receptions or luncheons offer sufficient opportunity for an exchange of ideas with a large and diverse group, they may qualify, on their own, as a WAG. If the cost to attend such events is allocated by the sponsor between the cost to attend the WAG and the cost to attend the recreational activity, DoD personnel may accept free attendance at the WAG, but must pay the portion attributable to the recreational activity, unless another gift exception applies. When the sponsor specifies only one amount to attend the entire event, as is currently the case for most golf fundraising tournaments, DoD personnel must pay the fair market value to attend the entire event, unless another gift exception applies. If the dinners, receptions or luncheons do not qualify as a WAG, DoD personnel may accept free attendance at those events only if another gift exception applies.

Examples of sporting and entertainment events that are not integral to a WAG:

- The American Association of Military Officers (AAMO) is hosting its First Annual AAMO Fundraiser at a golf club in Northern Virginia. The event includes a luncheon and dinner, and a golf tournament in the afternoon that will link these two events together. A large and diverse group of individuals from the public and private sectors has been invited to attend all three segments of the fundraiser. Golfers will be assigned to play in foursomes. In this instance, the fact that the golf tournament is sandwiched in between the luncheon and dinner is not sufficient to make the round of golf integral to the overall fundraising event. The meaningful exchange of ideas among a large and diverse group of individuals that is required by the WAG rule cannot take place during a round of golf. It may take place at the luncheon and the dinner, however, so both of these activities may qualify as a WAG. The fact that the AAMO event is a fundraiser does not alter

this conclusion as the Office of Government Ethics has advised that nothing in the WAG rule bars its application to fundraisers per se. (OGE 99x2).

- A center for performing arts invites a DoD Under Secretary to its 2008 Spring Gala, a fundraising event in Washington, D.C. The event consists of a performance of its symphony orchestra and a reception and dinner prior to the performance. Several hundred individuals representing the public, private and nonprofit sectors will attend the event. The cost of a ticket to the entire event is \$750, which includes the severable symphony performance, valued at \$50. The reception and dinner may be accepted as a gift by the Under Secretary under the WAG exception if a determination is made that the event will further agency programs and operations. Given the Under Secretary's opportunity to mingle with Ambassadors, Members of Congress and leaders of major corporations and nonprofits, it is likely that such a determination will be made.

The symphony performance, on the other hand, is not a venue that would allow the broad exchange of views since participants will be sitting in assigned seats and remain quiet throughout the performance. Furthermore, it is not integral to the reception and dinner since the Under Secretary would not derive any additional opportunities to exchange ideas among a broad and diverse group during the performance and the performance is severable from the reception and dinner. Thus, the ticket to the symphony performance may not be accepted as a gift under the WAG exception. If the Under Secretary would like to hear the symphony perform, he must pay the Kennedy Center \$50 to attend the performance.

For financial disclosure purposes, since the gift of the reception and dinner exceeds the \$335 reporting threshold, it must be reported on the Under Secretary's SF278. The value of the gift to be reported is \$700 (\$750 minus the value of the symphony ticket, which could not be accepted as a gift).

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